

HIGH COURT OF CHHATTISGARH: BILASPUR
(DIVISION BENCH)

CORAM : Hon'ble Shri Vijay Kumar Shrivastava &
Hon'ble Shri Dharendra Mishra, J.J.

Criminal Appeal No. 1689/1995

Appellant : Hiralal S/o Amar Singh Gond, aged
about 35 years, R/o Jadhari, Police
Station Chirimiri,
District Sarguja (C.G.)

Versus

Respondent : State of M.P., through Police Station
Chirimiri, District Sarguja.

PRESENT :

Smt. Savita Tiwari, counsel for appellant.
Shri M.P.S. Bhatia, Panel Lawyer for the State

J U D G M E N T

(Dated 12.06.2006)

Per Hon'ble Shri Dharendra Mishra, J.

This appeal has been directed against the judgment of conviction and order of sentence passed by the Additional Sessions Judge, Manendragarh on 4.12.1995 in S.T. No. 145/94 whereby the appellant has been held guilty for committing the offence punishable under section 302 of the I.P.C. and sentenced to undergo imprisonment for life.

2. The material facts necessary for disposal of this appeal are that on 18.9.1993 at about 13.30 hours Jailal Singh (PW/1) lodged a report in Police Station, Chirmiri informing that on that day at

about 5.00 A.M., the appellant assaulted deceased Raghunath Singh on his right temporal region with axe and also chased him. On the basis of above report, Crime No. 285/93 was registered in Police Station under Section 307 of the I.P.C. After registering the offence, the Investigating Officer went to the place of occurrence. Body of the deceased was sent for autopsy to Community Health Centre, Chirmiri where Dr. S.N. Suhane conducted the postmortem and submitted his report Ex.P-4. During investigation, plain soil and blood stained soil was seized from the place of incident vide Ex. P.-2. Axe, the weapon of offence, appellant's Gudara and Gamcha were seized from Raghu Pratap Singh (P.W.-3). After completing investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Manendragarh who in turn committed the case for trial to the Court of Sessions Judge, Ambikapur and the same was received on transfer for trial by the learned Additional Sessions Judge. Learned Trial Court framed charge under Section 302 of the I.P.C. The appellant abjured the guilt. The prosecution in order to establish its case examined four witnesses in all and thereafter, statement of accused was recorded under Section 313 of the Cr.P.C. The appellant examined defence witness Sunder Sai. The appellant in his defence submitted that on the date of incident his brother-in-law came to his house and slept there along with him in the relevant night and he has been falsely implicated by Jailal Singh (P.W.-1). However, learned Trial Court convicted and sentenced the appellant as mentioned above.

3. Learned counsel for the appellant submits that the Court below has wrongly held the appellant guilty of the above offence.

The statements of the alleged eye witnesses do not inspire confidence. The prosecution has not examined the investigating officer and have also not established and proved various documents collected during the investigation and in view of the aforesaid circumstances, the Court below ought to have extended benefit of doubt to the appellant and grave prejudice has been caused to the appellant on account of non-examination of the Investigating Officer also. On the other hand, learned counsel for the State supports the impugned judgment.

4. We have heard learned counsel for the parties. The homicidal death of the deceased Raghunath Singh is not in dispute. Even otherwise from perusal of the statements of alleged eye witnesses and the statement of Dr. S.N. Suhane (P.W/4), who conducted the postmortem over the body of the deceased Raghunath Singh, homicidal death of deceased Raghunath Singh is established. As per the report submitted by the doctor who conducted the postmortem, following injuries were noticed:

- (1) Swelling on the right side of the face over right temporal cheek of size 22.5 CM X 18 CM in the upper region of the neck.
- (2) Lacerated wound in the size of 1 CM X 0.1 CM skin deep situated in front of right ear.
- (3) Lacerated wound in the size of 1.2 CM X 0.3 CM bone deep situated in mastoid region.
- (4) Lacerated wound in the size of 0.3 CM X 0.1 CM skin deep below of right ear.

On internal examination, he has found fracture of right temporal bone, fracture of upper mandible bone and fracture of

survival vertebra of neck. The doctor has also opined that the cause of death is shock as a result of haemorrhage from wounds and intracranial haemorrhage and blood came out from cranial spine and mandible. The death was homicidal in nature.

5. So far as the involvement of the appellant in the crime in question is concerned, from the statement of Jailal Singh (PW/1) and Kauleshwar Singh (P.W/2), it is clear that Jailal Singh called Kauleshwar Singh as sorcerer for his treatment, at that time, deceased Raghunath Singh came to his house along with Hiralal for the purpose of sorcery and the accused Hiralal slept in his house and in the morning at 5.00 A.M., the accused Hiralal woke up and took out the axe from the nearby place and gave three blows on the right temporal region of deceased and also chased Jailal after committing the offence. The accused ran away and went to the village watchman who apprehended him and brought to the place of incident. The deceased was admitted in the hospital. However, he succumbed to the injuries. They have not been able to elicit anything in the cross-examination of witness Jailal which makes the evidence of this witness untrustworthy or unreliable in any way. The statement of P.W.1 is duly corroborated in material particulars by the statement of Kauleshwar Singh (P.W/2) who is also an eye witness to the incident and has stated that the appellant assaulted the deceased before him with axe. The statement of these witnesses is corroborated by the statement of P.W/4 Dr. S.N. Suhane who conducted postmortem on the person of the deceased. It is also corroborated by the First Information Report lodged by P.W./1 on the same date in which

the appellant is mentioned as the assailant. So far as the defence of the appellant that he was not present at the time of incident in the house of the deceased is concerned, in view of the statement of independent eye witness who had seen the incident and who have no enmity with the appellant to implicate him falsely, we are of the opinion that a false defence has been taken by the appellant and the statement of defence witness cannot be accepted as he stated the defence version for the first time in the Court and did not disclose the same to the police at the time of investigation.

6. In the result, the appeal preferred by the appellant deserves to be dismissed and is accordingly dismissed.

Sd/-
V.K. Shrivastava
Judge

Sd/-
Dhirendra Mishra
Judge

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